



# Empire State Development



## **Request for Proposals (RFP) for Pre-Qualified Providers of Information Technology Goods and Services**

**Issued: April 13, 2023**

### **IMPORTANT NOTICE:**

A restricted period under the Procurement Lobbying Law is currently in effect for this Procurement and it will remain in effect until approval of the pre-qualified list. Bidders (also referred to as Respondents) are prohibited from contact related to this procurement with any New York State employee other than the designated contacts listed below

### **Designated Contacts for this Procurement:**

Primary Contact: John F. Discolo

Secondary Contact (s): Ralph Volcy/Hector Morel

**Respondents must request a dedicated Dropbox for submitting a digital version of their proposal and any contacts/inquiries shall be made by email to the following address:**

**[IT-Prequal@esd.ny.gov](mailto:IT-Prequal@esd.ny.gov)**

This RFP is posted on the Empire State Development website:  
**<https://esd.ny.gov/doing-business-ny/requests-proposals>**

**PROPOSAL DUE DATE AND TIME: May 5, 2023 at 5:00 PM EST**

## I. INTRODUCTION

The mission of Empire State Development (“ESD”) is to promote a vigorous and growing State economy, encourage business investment and job creation, and support diverse, prosperous local economies across New York State through the efficient use of loans, grants, tax credits, real estate development, marketing and other forms of assistance.

### OVERVIEW

ESD is soliciting proposals from qualified contractors to provide consulting services/purchasing options for technical projects. From among the Proposals received, ESD intends to select a list of qualified firms to perform consulting services related to the ESD’s Information Systems infrastructure (both hardware and software systems). **The anticipated duration of the list is three (3) years, at which point ESD anticipates that it will issue a new solicitation for pre-qualified firms.**

### MWBE & SDVOB Subcontractor Interest

New York State certified Minority- and Women-Owned Businesses (MWBEs) and Service-Disabled Veteran Owned Businesses (SDVOBs) may request that their firm’s contact information be included on a list of MWBE and SDVOB firms interested in serving as a subcontractor for this procurement. The listing will be publicly posted on ESD’s website for reference by the bidding community. A firm requesting inclusion on this list should send contact information and a copy of its NYS MWBE or SDVOB certification to [IT-Prequal@esd.ny.gov](mailto:IT-Prequal@esd.ny.gov). Nothing prohibits an M/WBE firm from responding to this RFP as a prime contractor.

## II. PROJECT OVERVIEW

### A. Project Goals

The goal of this RFP is to create a panel of firms from which ESD can quickly and easily acquire goods and services to support initiatives across the entire spectrum of its technology hardware and software products. ESD expects to achieve the following objectives:

1. Provide a cost-effective source of resources to support its technology infrastructure.
2. Create sustainable partnerships with qualified firms to create mutually beneficial relationships.
3. Provide a flexible configuration to meet new and changing business requirements and software/hardware needs.
4. Identify informational material about new products and services that may be of interest to ESD for consideration in the future.
5. Create economies of scale associated with IT procurements.

## **B. Scope of Work**

Pre-qualified firms may be requested to enter into contracts or term contracts<sup>1</sup> with ESD to provide goods and services, including, but not limited to, the following items:

1. Consulting, training, implementation services/support, development, hosting and/or project management for Oracle PeopleSoft Financials 9.2 or newer and procurement of all related hardware and software.
2. Hosting, programming, training, systems design and development of applications and websites (utilizing technologies including but not limited to: Drupal, Azure, AWS, SQL Server, IIS, [Microsoft.Net](#), custom code, C#, SSRS, Crystal Reports, Power BI, SharePoint) and procurement of all related hardware and software.
3. Consulting, training, implementation services/support and/or project management and procurement of all related hardware and software for the following systems/infrastructure
  - a. Virtual server and desktop infrastructure (including but not limited to: VMware VCS, ESX, SRM, Horizon, AVS, Virtual Servers, Virtual Desktops (VDI) products and vendors such as but not limited to VMware and Microsoft).
  - b. Cyber security infrastructure (including but not limited to: Cyber Security audits, Cyber policy and program management, MFA, access management, firewalls, Intrusion Detection and Prevention, anti-malware, anti-spyware, next gen antivirus, forensic analysis, EDR, products and vendors such as but not limited to: Palo Alto, DUO, Microsoft, Carbon Black, SecureWorks, Know B4).
  - c. Network infrastructure and configuration (including but not limited to: switches, routers, printers, scanners, copiers, fiber, cabling, wireless networks, cloud networks, virtual networks, LAN, WAN, Internet providers, data lines, MPLS products and vendors such as but not limited to: Juniper, Microsoft Azure, Amazon AWS, Dell, HP, Meraki, Mist, Avaya).
  - d. Server, storage and backup infrastructure including Cloud based infrastructure and storage (products and vendors such as but not limited to: Microsoft Azure, NetApp, NetApp Cloud, Amazon AWS, Rubrik, Cohesity, Oracle, HP, Dell, IBM).
  - e. Microsoft Dynamics Power Apps and O365 infrastructure, development, configuration, licensing, plugins, customizations, workflow and data mapping (products such as but not limited to: Dynamics, SharePoint GIS, Portal, Power BI and other BI tools)

<sup>1</sup> Term contracts contain no dollar value and do not oblige the vendor to provide goods or services, or ESD to render payment, unless and until a work order is issued.

- f. Data Warehouse infrastructure (including but not limited to: MSSQL, SSIS Integration, Power BI, data modeling tools, Azure Data Services, Visual Studio, SSRS, SSAS (products and vendors such as but not limited to: Microsoft, KingswaySoft, Synapse Analytics, Synapse Link for Dataverse Lake database).
- g. General application and cloud development infrastructure (including but not limited to: coding, configuration, project management (utilizing methodologies such as agile and waterfall), business requirements analysis and documentation, quality assurance and testing, change control/change management, source control, secure coding, application development lifecycle, IT training (products and vendors such as but not limited to: Microsoft, Drupal and GitHub).
- h. Mobile device products, infrastructure, and services (products and vendors such as but not limited to: Ipads, laptops, tablets, cellular service, phones, MiFi devices, by vendors including but not limited to: Apple, Verizon, AT&T, Lenovo, HP, IBM, Dell, Chromebook).
- i. Secure data collection infrastructure and tools for PDF and web-based forms (products and vendors such as but not limited to: Form Router, Adobe and Kofax).
- j. Video and web conferencing systems infrastructure hosting and onsite audio/video recording and streaming services (products and vendors such as but not limited to: Polycom, Zoom, Webex, ClickShare, BlueJeans, MS Teams, and YouTube).
- k. Desktop PC products and infrastructure (products and vendors such as but not limited to: Dell, Apple, IBM, HP, Lenovo and Microsoft).
- l. General software and IT services such as Helpdesk (products and vendors such as but not limited to: Zendesk, peripherals, MailChimp, Survey Monkey, Granicus, Monday.com, Ziflow, Smartsheet, Dropbox, DocuSign, Smart Draw and Smart PC).
- m. Communications services such as high- speed internet, public and private cloud services gateways, hosted voice and data services
- n. General IT services such as rack and stack network equipment, connecting networking devices, such as access points, acting as remote hands on for third party vendors and ESD.

**III. SCHEDULE OF DATES** (The Corporation reserves the right to change any of the dates stated in this RFP)

<b>Release of RFP</b>	<b>April 13, 2023</b>
<b>Deadline for Submission of Questions and Dedicated Dropbox Request</b>	<b>April 21, 2023 by 5:00 PM EST</b>
<b>Deadline for ESD to Respond to Questions</b>	<b>April 28, 2023 by 5:00PM EST</b>
<b>Submission of Proposals (date and time)</b>	<b>May 5, 2023 by 5:00 PM EST</b>
<b>Interviews (if necessary)</b>	<b>TBD</b>

**IV. SUBMISSION OF PROPOSALS**

ESD reserves the right, in its sole discretion, to reject any Proposal that is deemed incomplete or unresponsive to the RFP requirements. ESD also reserves the right, in its sole discretion, to reject any and all Proposals for any reason or for no reason, and to proceed (or not proceed) with the Project (either by itself or in conjunction with one or more third-parties without completing this RFP process).

In evaluating the capabilities of the Respondent, ESD may utilize any and all information available (including information not provided by the Respondent). Proposals should clearly and concisely state the unique capabilities, experience, and advantages of the Respondent, and demonstrate the Respondent's capability to satisfy the requirements and objectives set forth in this RFP. ESD further reserves the right to ask additional written or oral clarifying questions to all Respondents or to a subset of Respondents.

**A. Respondent Information**

Below is a listing of the technical information to be provided by the Bidder. No information is required beyond what is specifically requested. The Corporation requests that all Technical Proposals be organized with dividers identified to match the specific information requested below:

1. Description of Respondent background;
2. Description of Respondent areas of specialty, highlighting capabilities or solutions that are unique or noteworthy;
3. Three (3) references;
4. Certification of all products mentioned in the Scope of Work.

**B. Technical Proposal**

Following is a listing of the information required to be provided by the proposer. A technical proposal that does not provide all the information requested below may be subject to rejection. Provide the information in the same order in which it is requested. Your technical proposal must contain sufficient information to assure ESD of its accuracy.

1. Provide a separate numbered section corresponding with each item listed in the Scope of Work documenting the firm's qualifications in the respective area. If you are not seeking consideration for a particular item, include a numbered section and indicate that no response is being provided.
2. Provide a description of the firm's experience providing similar goods and services including recent relevant project experience to the public and private sector. Include the names, titles and phone numbers of at least three (3) references excluding ESD employees for whom similar services have been provided and a summary of the services provided.
3. The proposer must agree to provide ESD with pre and post-audit access to documents, personnel and other information necessary to conduct audits on request during the term of the Contract and for six years thereafter.
4. The proposal submitted must contain a representation that the proposer is willing and ready to provide any good and services requested or required in a timely manner.
5. Disclose any potential conflicts of interest.
6. Note any special certifications relevant to this RFP that your firm or proposed staff may possess, and outline opportunities that consulting staff have to keep skills current.

### **C. Cost Proposal**

Provide a **"Cost Proposal"** which details the following:

1. Proposed hourly rate for each resource by title, listing hourly rates for each resource that include all costs, excluding out-of-pocket reimbursable expenses related to travel but including overhead and profit;
2. Provide a salary multiplier for any hourly rates specified. This salary multiplier will be used for any specialty resources not specified on the proposal.
3. Identify cost of goods and identify max percentage that ESD will be discounted below retail price of those goods.
  - a. Rates for these discounts will be a maximum charge for goods. Nothing prevents respondent from offering deals below this rate for volume purchases or as an incentive to purchase. Respondents may not charge above quoted rate.
  - b. Respondent must show evidence of list price with quote and associated discounts to show calculation of cost.

**Please note that ESD will negotiate maximum rates and set discounts for any selected participants.**

## VI. SELECTION CRITERIA

All Proposals may be reviewed by ESD and other State officials. The award of any contract pursuant to this solicitation may be subject to, as required under applicable law and regulation, review and/or approval of the ESD Directors, the Comptroller of the State of New York, and/or the New York State Attorney General. When evaluating Proposals, the following criteria will be considered in the associated weighted percentages:

Criteria	Weighting
Demonstrated capacity to perform the types of activities that have been described in the Scope of Work.	30%
Experience in engagements with the hardware and software utilized by ESD.	20%
Quality of the work product. For those firms who have worked for ESD before, quality of work on those transactions will be considered.	25%
Cost Proposal rates evaluated on reasonableness in comparison to other respondents.	20%
Quantitative Factor: ESD will award 5% to Respondents that are certified Minority or Women-owned Business Enterprises (MWBES) as defined in section three hundred ten of the New York State Executive Law 15-A or Service-Disabled Veteran owned Business Enterprises ("SDVOBs") as defined in section three hundred sixty-nine of the New York State Executive Law 17-B.	5%

ESD also reserves the right to conduct interviews with or pose questions in writing to individual Respondents in order to clarify the content of their Proposals and to ensure a full and complete understanding of each Proposal. ESD shall undertake to pursue uniformity in the questions it asks to Respondents to the extent practicable, but ESD may ask different or additional questions to different Respondents in the context of any individual interview or in writing. ESD reserves the option to hold oral interviews as part of the selection process, in which case ESD shall convene a committee of staff who shall be permissible contacts for the purpose of such interviews, and Respondents who are invited will receive additional instructions upon their invitation.

## VII. SUBMISSION OF PROPOSALS

**Proposals must be received by ESD no later than 5:00 P.M. EST, on the date listed within the Schedule of Dates. Respondents must utilize a Dropbox that will be created upon request. If a Respondent did not receive a link to the designated Dropbox within 48 hours prior to the submission deadline, they should contact ESD immediately in order for the matter to be resolved.**

## VIII. QUESTIONS

All questions regarding this RFP must be submitted in writing to ESD via [e-mail IT-Prequal@esd.ny.gov](mailto:IT-Prequal@esd.ny.gov). Please do not contact ESD by telephone. Questions must be received no later than 5:00 P.M. U.S. Eastern Daylight on the date listed under Schedule of Dates . All questions must cite the particular RFP section, if applicable. As appropriate, ESD will respond to questions by emailing its responses to all known recipients of the RFP as well as posting them on the ESD web site at: <http://esd.ny.gov/CorporateInformation/RFPs.html>.

If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, notification should be sent immediately to ESD via e-mail [IT-Prequal@esd.ny.gov](mailto:IT-Prequal@esd.ny.gov) requesting written clarification or modification to the RFP. Should ESD find it necessary, addenda or modification to the RFP will be provided in writing to all known recipients of the RFP and will be posted on the ESD web site: <http://esd.ny.gov/CorporateInformation/RFPs.html>.

**No contact related to this solicitation with ESD Board members, staff or consultants, other than as specified in this RFP, or with any other governmental entity other than State legislators and their staff, will be allowed during the procurement period of this RFP. Any such contact by a Respondent will be grounds for disqualification.**

## IX. GENERAL PROVISIONS

The issuance of this RFP and the submission of a response by a Bidder or the acceptance of such a response by ESD does not obligate ESD in any manner. ESD reserves the right to:

1. Amend, modify or withdraw this RFP;
2. Revise any requirement of this RFP;
3. Require supplemental statements or information from any responsible party;
4. Accept or reject any or all responses hereto;
5. Extend the deadline for submission of responses hereto;
6. Negotiate potential contract terms with any Bidder;
7. Communicate with any Bidder to correct and/or clarify responses which do not conform to the instructions contained herein;
8. Cancel, or reissue in whole or in part, this RFP, if ESD determines in its sole discretion that it is its best interest to do so; and
9. Extend the term of any agreement on terms consistent with this RFP.

ESD may exercise the foregoing rights at any time without notice and without liability to any responding firm or any other party for its expenses incurred in preparation of responses hereto or otherwise. All costs associated with responding to this RFP will be at the sole cost and expense of the Bidder.

All information submitted in response to this RFP is subject to the Freedom of Information Law ("FOIL"), which generally mandates the disclosure of documents in the possession of ESD upon the request of any person unless the content of the document falls under a specific exemption to



disclosure. In addition, Proposals may be discussed at meetings of the ESD Directors, which meetings are subject to the Open Meetings Law.

ESD reserves the right, in its sole discretion, to retain and use all the materials and information, and the ideas and suggestions therein, submitted in response to this solicitation (collectively, the "Response Information") for any purpose. By submitting a Proposal, each Respondent waives any and all claims against ESD relating to ESD's retention or use of the Response Information.

### **Required Approvals**

Awarded contracts, if any, may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law §2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the State, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). If the awarded contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with the contract, unless and until OSC approval has been received.

### **Performance**

Contractor warrants that, if awarded a contract with ESD, its services shall be performed in accordance with applicable professional standards and that the Contractor shall correct, at no charge to the Corporation, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

### **Additional Services Requested**

The Corporation may, at any time, by written notice, make changes or additions to work or services within the general scope of any contract resulting from this RFP (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of the contract, an equitable adjustment may be made in the price using the billing rates set forth in the contract, and the Contractor shall be notified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the Contractor of the notification of change; provided however, that the Corporation, if it decides that the facts justify such action, may receive and act upon such claim as asserted at any time. Nothing in this clause shall excuse the Contractor from proceeding with this contract as modified.

### **Contractor Staff**

Contractor staff assigned to work on any contract awarded pursuant to this RFP shall be subject to approval by the Corporation. It is highly desirable that staff assigned to work on a project continue to work on such project until completion. The Contractor should notify the Corporation of any proposed changes in staff immediately. The Corporation has an absolute right and discretion to

approve or disapprove any proposed changes in staff. The Corporation, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld.

The Contractor specifically represents and agrees that its members, officers, employees, agents, servants, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties which they propose to perform hereunder.

Any contract resulting from this RFP is intended to secure the professional services of the Contractor because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the Contractor.

If awarded a contract, the Contractor agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the State Project Manager. Approval shall not be unreasonably withheld upon receipt of written request to subcontract. All employees of the Contractor, or of its Subcontractors, who shall perform Services under this contract, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the Services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform Services on behalf of Contractor under the Agreement resulting from this RFP shall, in performing such Services, comply with all applicable Federal and State laws concerning employment in the United States.

## **CONTRACTUAL REQUIREMENTS**

This section contains additional information about the forms that are required to be included in each Respondent's submission pursuant to Section VI of this RFP, as well as information about ESD's procurement requirements.

### **i. Conflicts of Interest**

Respondent must attest it has read, understood and will comply with the following provisions <https://esd.ny.gov/sites/default/files/Conflict-of-Interest-Attestation-June-2019.pdf>. ESD shall have the right to disqualify any respondent to this RFP or terminate any contract entered into as a result of this RFP should ESD determine that the Respondent has violated any of these requirements.

- A. Gifts and Offers of Employment:** Respondent has not and shall not during this procurement and during the negotiation of any contract resulting from this procurement, offer to any employee, member or director of ESD, any gift, whether in the form of money, services, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the offer was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director. Respondent may not make any offers of employment or discuss the possibility of such offers with any employee, member or director of ESD who is involved in this procurement and/or resulting contract negotiation

within at least 30 days from the time that the employee's involvement in this matter closed.

- B. Disclosure of Potential Conflicts:** Respondent shall disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers/employers of the Respondent or former officers and employees of ESD, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, Respondent must describe how it would eliminate or prevent it.
- C. Disclosure of Ethics Investigations:** Respondent must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any ongoing investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, "Commission"), and if so, a description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

**ii. State Finance Law Sections 139-j and 139-k forms**

State Finance Law Sections 139-j and 139-k (collectively, the "Procurement Requirements") apply to this RFP. These Procurement Requirements: (1) govern permissible communications between potential Respondents and ESD or other involved governmental entities with respect to this RFP; (2) provide for increased disclosure in the public procurement process through identification of persons or organizations whose function is to influence procurement contracts, public works agreements and real property transactions; and (3) establish sanctions for knowing and willful violations of the provisions of the Procurement Requirements, including disqualification from eligibility for an award of any contract pursuant to this RFP. Compliance with the Procurement Requirements requires that all communications regarding this RFP, from the time of its issuance through final award and execution of any resulting contract (the "Restricted Period"), be conducted only with the designated contact persons listed above; the completion by Bidders of the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law (each form is accessible at the Required Forms for Vendors link at the ESDC web site under "RFPs/RFPs"); and periodic updating of such forms during the term of any contract resulting from this RFP.

Respondents must submit the Offeror Disclosure of Prior Non-Responsibility Determinations, and the Offeror's Affirmation of Understanding and Agreement pursuant to State Finance Law as part of their submittal. Copies of these forms are available at:

[https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF\\_Law139\\_JK.pdf](https://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/SF_Law139_JK.pdf).

The Procurement Requirements also require ESD staff to obtain and report certain information when contacted by Bidders during the Restricted Period, make a determination of the responsibility of Respondents and make all such information publicly available in accordance with applicable law. If a Bidder is found to have knowingly and willfully violated the State Finance Law provisions, that Respondent and its subsidiaries, related or successor entities will be determined to be a non-

responsible Respondent and will not be awarded any contract issued pursuant to this solicitation. In addition, two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State governmental procurement contract. The designated contact account for this solicitation is referenced on the cover of this RFP.

### **iii. Vendor Responsibility Questionnaire**

All Bidders to this RFP must be “responsible,” which in this context means that they must have the requisite financial ability, organizational capacity, and legal authority to carry out its obligations under this RFP, and in addition must demonstrate that both the Respondent and its principals have and will maintain the level of integrity needed to contract with New York State entities such as ESD. Further, the Respondent must show satisfactory performance of all prior government contracts. Accordingly, the contract to be entered into between ESD and the Respondent, if any, shall include clauses providing that the Respondent remain “responsible” throughout the term of the contract, that ESD may suspend the contract if information is discovered that calls into question the responsibility of the contracting party, and that ESD may terminate the contract based on a determination that the contracting party is non-responsible. On request, model language to this effect will be provided to any Respondent to this RFP.

To assist in the determination of responsibility, ESD requires that all Respondents register in the State's Vendor Responsibility System (“Vend-Rep System”). The Vend-Rep System allows business entities to enter and maintain their Vendor Responsibility Questionnaire information in a secure, centralized database. New York State Procurement Law requires that state agencies award contracts only to responsible vendors. Respondents are to file the required Vendor Responsibility Questionnaire online via the Vend-Rep System or may choose to complete and submit a paper questionnaire. Please include a copy of your Vend-Rep submission receipt or paper questionnaire with your proposal.

To enroll in and use the Vend-Rep System, see the System Instructions available at [www.osc.state.ny.us/vendrep](http://www.osc.state.ny.us/vendrep). For direct Vend-Rep System user assistance, the Office of the State Comptroller’s Help Desk may be reached at 866-370-4672 or 518-408-4672 or by email at [helpdesk@osc.state.ny.us](mailto:helpdesk@osc.state.ny.us).

Bidders opting to file a paper questionnaire can obtain the appropriate questionnaire from the Vend-Rep website ([http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm)) and execute accordingly pertaining to the company’s trade industry. Per the website, Bidders are to “Select the questionnaire which best matches the business type (either For-Profit or Not-For-Profit) and business activity (Construction or Other).”

### **iv. Iran Divestment Act**

Every Proposal made to ESD pursuant to a competitive solicitation must contain the following statement, signed by the Respondent on company letterhead and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization,

under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law."

**v. Executive Order 16**

In accordance with New York State Executive Order 16 ("EO-16), all bidders must certify that they are in compliance with EO-16 prohibiting State Agencies and Authorities from Contracting with Businesses in Russia. EO-16 will remain in effect while sanctions imposed by the federal government are in effect.

"By submission of a bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is in compliance with EO-16."

**vi. Executive Order 177**

In accordance with New York State Executive Order 177, all bidders must certify that they are in compliance with the New York State Human Rights Law which prohibits discrimination and harassment based on a protected class, and which requires reasonable accommodation for persons with disability or pregnancy related conditions.

The required certification for can be found at:

<https://esd.ny.gov/sites/default/files/EO-177-Certification.pdf> and must be signed and included in all Proposals.

**vii. Non-Discrimination and Contractor & Supplier Diversity Requirements**

**CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE-CERTIFIED MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations ESD is required to promote opportunities for the maximum feasible participation of New York State-certified Minority and Women-owned Business Enterprises ("MWBEs") and the employment of minority group members and women in the performance of ESD contracts.

**Business Participation Opportunities for MWBEs**

For purposes of this solicitation, ESD hereby establishes an **overall goal of 30 percent for MWBE** participation. A contractor ("Contractor") on any contract resulting from this procurement ("Contract") must document its good faith efforts to provide meaningful participation by MWBEs as subcontractors and suppliers in the performance of the Contract. To that end, by submitting a response to this RFP, the respondent agrees that ESD may withhold payment pursuant to any Contract awarded as a result of this RFP pending receipt of the required MWBE documentation. The directory of MWBEs can be viewed at: <https://ny.newnycontracts.com>. For guidance on how ESD will evaluate a Contractor's "good faith efforts," refer to 5 NYCRR § 142.8.

The respondent understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

In accordance with 5 NYCRR § 142.13, the respondent further acknowledges that if it is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in a Contract resulting from this RFP, such finding constitutes a breach of contract and ESD may withhold payment as liquidated damages.

Such liquidated damages shall be calculated as an amount equaling the difference between: (1) all sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and (2) all sums actually paid to MWBEs for work performed or materials supplied under the Contract.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts to achieve the applicable MWBE participation goals by submitting evidence thereof through the New York State Contract System ("NYSCS"), which can be viewed at <https://ny.newnycontracts.com>, provided, however, that a respondent may arrange to provide such evidence via a non-electronic method by contacting the Office of Contractor and Supplier Diversity ("OCSD") at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

Additionally, a respondent will be required to submit the following documents and information as evidence of compliance with the foregoing:

- A. An MWBE Utilization Plan with their bid or proposal. Any modifications or changes to an accepted MWBE Utilization Plan after the Contract award and during the term of the Contract must be reported on a revised MWBE Utilization Plan and submitted to ESD for review and approval.

ESD will review the submitted MWBE Utilization Plan and advise the respondent of ESD acceptance or issue a notice of deficiency within 30 days of receipt.

- B. If a notice of deficiency is issued, the respondent will be required to respond to the notice of deficiency within seven (7) business days of receipt by submitting to OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov), a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the respondent and direct the respondent to submit, within five (5) business days, a request for a partial or total waiver of MWBE participation goals. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

ESD may disqualify a respondent as being non-responsive under the following circumstances:

- a) If a respondent fails to submit an MWBE Utilization Plan;
- b) If a respondent fails to submit a written remedy to a notice of deficiency;
- c) If a respondent fails to submit a request for waiver; or
- d) If ESD determines that the respondent has failed to document good faith efforts.

The successful respondent will be required to attempt to utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract Award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

The successful respondent will be required to submit a quarterly MWBE Contractor Compliance & Payment Report to ESD, by the 10<sup>th</sup> day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

### **Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the respondent agrees with all of the terms and conditions [SCHEDULE B - PARTICIPATION BY MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: REQUIREMENTS AND PROCEDURES](#). The respondent is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the respondent, undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The respondent will be required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, OCSD-1, to ESD with its bid or proposal.

If awarded a Contract, respondent shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by ESD on a QUARTERLY basis during the term of the Contract.

Pursuant to Executive Order #162, contractors and subcontractors will also be required to report the gross wages paid to each of their employees for the work performed by such employees on the contract utilizing the Workforce Utilization Report on a quarterly basis.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and subcontractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of**



**funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.**

The required forms can be found at the following web addresses:

Form OCSD-1: <https://esd.ny.gov/sites/default/files/OCSD-1-Policy-Statement.pdf>

Form OCSD-2: <https://esd.ny.gov/sites/default/files/OCSD-2-Staffing-Plan.pdf>

Form OCSD-3:

<https://esd.ny.gov/sites/default/files/OCSD-3-Workforce-Utilization-Report.xlsx>

Form OCSD-4: <https://esd.ny.gov/sites/default/files/OCSD-4-Utilization-Plan.pdf>

Form OCSD-5: <https://esd.ny.gov/sites/default/files/OCSD-5-Waiver-Request-Form.pdf>

Form OCSD-6: <https://esd.ny.gov/sites/default/files/OCSD-6-Compliance-Report.pdf>

In the event that the above links are unavailable or inactive, the forms may also be requested from OCSD at [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

## **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders are expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

### **Contract Goals**

- A. ESD hereby establishes an overall goal of **6% for SDVOB participation**, based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the Bidder/Contractor should reference the directory of New York State Certified SDVOBs found at: <https://online.ogs.ny.gov/SDVOB/search>. Questions regarding compliance with SDVOB participation goals should be directed to the Designated Contacts. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss additional methods of maximizing participation by SDVOBs on the Contract.
- B. Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract.



## **SDVOB Utilization Plan**

- A. In accordance with 9 NYCRR § 252.2(i), Bidders are required to submit a completed SDVOB Utilization Plan on Form OCSD-4.
- B. The Utilization Plan shall list the SDVOBs that the Bidder intends to use to perform the Contract, a description of the work that the Bidder intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Bidder acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to ESD.
- C. ESD will review the submitted SDVOB Utilization Plan and advise the Bidder/Contractor of ESD acceptance or issue a notice of deficiency within 20 days of receipt.
- D. If a notice of deficiency is issued, Bidder/Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to ESD a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by ESD to be inadequate, ESD shall notify the Bidder/Contractor and direct the Bidder/Contractor to submit, within five business days of notification by ESD, a request for a partial or total waiver of SDVOB participation goals on OCSD-5. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.
- E. ESD may disqualify a Bidder's bid or proposal as being non-responsive under the following circumstances:
  - (a) If a Bidder fails to submit an SDVOB Utilization Plan;
  - (b) If a Bidder fails to submit a written remedy to a notice of deficiency;
  - (c) If a Bidder fails to submit a request for waiver; or
  - (d) If ESD determines that the Bidder has failed to document good faith efforts.
- F. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth above.
- G. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

## **Request for Waiver**

A. Prior to submission of a request for a partial or total waiver, Bidder/Contractor shall speak to the Designated Contacts at ESD for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Bidder/Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in clause IV below, may submit a request for a partial or total waiver on Form OCSD-5, accompanied by supporting documentation. A Bidder may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by ESD at that time, the provisions of clauses II (C), (D) & (E) will apply. If the documentation included with the Bidder's/Contractor's waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the Contract. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to ESD, but must be made no later than prior to the submission of a request for final payment on the Contract.

D. If ESD, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (OCSD-6) determines that Contractor is failing or refusing to comply with the contract goals and no waiver has been issued in regard to such non-compliance, ESD may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to OCSD.

#### **Required Good Faith Efforts**

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

- (1) Copies of solicitations to SDVOBs and any responses thereto.
- (2) Explanation of the specific reasons each SDVOB that responded to Bidders/Contractors' solicitation was not selected.
- (3) Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by ESD with certified SDVOBs whom ESD determined were capable of fulfilling the SDVOB goals set in the Contract.
- (4) Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.
- (5) Other information deemed relevant to the waiver request.

### **Monthly SDVOB Contractor Compliance Report**

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to ESD during the term of the Contract for the preceding month's activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form OCSD-6 available on the ESD website and should be completed by the Contractor and submitted to ESD, by the 10th day of each month during the term of the Contract, for the preceding month's activity to: [OCSD@esd.ny.gov](mailto:OCSD@esd.ny.gov).

### **Breach of Contract and Damages**

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract, shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

### **PARTICIPATION OPPORTUNITIES FOR NEW YORK STATE CERTIFIED SERVICE-DISABLED VETERAN-OWNED BUSINESSES**

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State's economy. ESD recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of ESD contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Bidders/Contractors are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

For purposes of this procurement, ESD conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set specific goals for participation by SDVOBs as subcontractors, service providers, and suppliers to Contractor. Nevertheless, Bidder/Contractor is encouraged to make good faith efforts to promote and assist in the participation of SDVOBs on the Contract for the provision of services and materials.

The directory of New York State Certified SDVOBs can be viewed at: <https://online.ogs.ny.gov/SDVOB/search>.

Bidder/Contractor is encouraged to contact the Office of General Services' Division of Service-Disabled Veteran's Business Development at 518-474-2015 or [VeteransDevelopment@ogs.ny.gov](mailto:VeteransDevelopment@ogs.ny.gov) to discuss methods of maximizing participation by SDVOBs on the Contract.

### **viii. Encouraging the Use of NYS Businesses in Contract Performance Form**

New York State businesses have a substantial presence in State contracts and strongly contribute to the economies of the state and the nation. In recognition of their economic activity and leadership in doing business in New York State, Bidders for this ESD contract for commodities, services or technology are strongly encouraged and expected to consider New York State businesses in the fulfillment of the requirements of the contract. In order for ESD to assess the use of New York State businesses in each Proposal, ESD requests that each Respondent complete the Encouraging Use of New York State Businesses in Contract Performance form, accessible here: <http://esd.ny.gov/CorporateInformation/Data/ENCOURAGINGUSEOFNEWYORKSTATEBUSINESSES/NCONTRACTPERFORMANCE.pdf>.

**ix. Certification under State Tax Law Section 5-a**

Any contract resulting from this solicitation is also subject to the requirements of State Tax Law Section 5-a ("STL 5-a"). STL 5-a prohibits ESD from approving any such contract with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 and is not registered for sales and compensating use tax purposes. To comply with STL 5-a, all Bidders to this solicitation must include in their Proposals a properly completed Form ST-220-CA ([http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf)), or an affidavit ([http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL\\_5A\\_Affidavit.pdf](http://esd.ny.gov/CorporateInformation/Data/RFPs/RequiredForms/STL_5A_Affidavit.pdf)) that the Respondent is not required to be registered with the State Department of Taxation and Finance. Also in accordance with the requirements of STL 5-a, any contract resulting from this solicitation will require periodic updating of the certifications contained in Form ST-220-CA. Solicitation responses that do not include a properly completed ST-220-CA will be considered incomplete and non-responsive and will not be considered for contract award. Only the prime consultant completes Form ST 220-CA, but Schedule A to Form ST 220-CA requires detailed information from the sub-consultants, such as tax ID number, etc., if applicable. Moreover, if applicable, certificates of authority must be attached by the prime consultant and all the sub-consultants.

**x. Schedule A**

Following final selection of a Respondent, ESD will prepare a contract defining all project terms and conditions and the Respondent's responsibilities in conformance with Schedule A. A sample can be found at: [https://esd.ny.gov/sites/default/files/ScheduleA-Services\\_Materials-3818.pdf](https://esd.ny.gov/sites/default/files/ScheduleA-Services_Materials-3818.pdf)

Please note Bidders do not need to complete the entire Schedule A with the submission of their Proposal. However, Bidders should still review these terms, which are standard in all ESD contracts, and raise any concerns present prior to submission of their Proposal, as successful Bidders will need to accept these terms prior to contract execution.

**xi. Project Sunlight**

This procurement is subject to the Public Integrity Reform Act of 2011. Under the Public Integrity Reform Act of 2011, "appearances" (broadly defined and including any substantive interaction that is meant to have an impact on the decision-making process of a state entity) before a public benefit corporation such as ESD by a person (also broadly defined) for the purposes of procuring a state contract (as contemplated in this RFP) must be reported by ESD to a database maintained by the State Office of General Services that is available to members of the public. If in doubt as to the

applicability of Project Sunlight, Bidders and their advisors should consult the Laws of 2011, Ch. 399 for guidance.

**xii. Insurance Requirements**

The selected Bidder will be required to provide the following insurance (at a minimum and to the extent applicable):

- Commercial General Liability of \$1 million per occurrence and \$2 million in the aggregate;
- If you are using a vehicle in business, Commercial Automobile insurance with a limit of not less than \$1 million;
- Must show evidence of Worker's Compensation & Employer's Liability insurance at State statutory limits;
- Must show evidence of Disability insurance coverage at State statutory limits;

NYS Urban Development Corporation d/b/a Empire State Development (ESD) must be named as additional insured on a primary and non-contributory basis on all of the following policies: Commercial General Liability and Auto Liability. All policies above should include a waiver of subrogation in favor of ESD.

**xiii. W-9 Form**

Provide a completed W-9 form (<https://www.irs.gov/pub/irs-pdf/fw9.pdf>), submit with proposal.